



CITIZEN VIDEOTAPING INTERACTIONS

FC No.: 1142

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If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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I. Policy

It is the policy of the Montgomery County Police Department to ensure the protection and preservation of every person's legal rights. These rights include: the right to free speech; the right to gather information about matters of public concern; the right to be free from unreasonable searches and seizures of both person and property; and the right to due process in advance of any deprivation of property. The purpose of this policy is to describe the rights of citizens relating to the photographing and/or videotaping of police officers in the performance of their duties, and to set forth expectations of how officers are to react to such actions.

In furtherance of this policy, and subject to the limited exceptions listed in this document, officers may not prevent, prohibit, and/or interfere with any person's ability to observe or record police activity occurring in the public domain, when the person recording is either in a place where that person has the right to be or is recording their own interactions with officers exercising police powers. Because it is increasingly common for persons at the scene of police activity to record the actions of officers, all officers should assume that, at any time, a member of the public is likely observing, and perhaps recording, their activities.

II. Definitions

- A. Videotaping: For purposes of this policy, the term videotaping includes all devices that record audio and video together. The capturing of an audio recording in connection with a video recording will not be considered to be a violation of the Maryland Wiretap Act for purposes of detaining, arresting, or charging an individual with a criminal act or civil violation.

III. Protected Actions

- A. Individuals have a right to record police officers in the public discharge of their duties. The right to record is not limited to streets/sidewalks and includes areas where individuals have a legal right to be present. Examples of places where individuals have a legal right to be present include, but are not limited to: an individual's home, business, or any other property where the person has a right to be present.

- B. Members of the press and members of the general public enjoy the same rights in any area open to the general public. No individual is required to have or to display “press credentials” in order to exercise his/her right to observe, photograph, or record police activity taking place in an area accessible to, or within view of, the general public.
- C. Officers may not search or seize a camera or recording device without a warrant, except under the limited circumstances described in Section V. of this policy.
- D. Officers are prohibited from threatening, intimidating, or otherwise discouraging any individual from recording police activities.
- E. Officers will not intentionally block or obstruct cameras or recording devices.
- F. Officers are prohibited from deleting recordings or photographs, and from intentionally damaging or destroying recording devices/cameras.

IV. Unprotected Actions

- A. A person may record public police activity unless the person engages in actions that jeopardize the safety of the officer, the suspect, or others in the vicinity, violates the law, or incite others to violate the law. Examples of such actions include, but are not limited to, the following examples:
 - 1. While in close proximity to an officer, intentionally distracting or attempting to distract an officer while the officer is in the midst of their duties, resulting in an officer’s concern for his/her safety.
 - 2. Intentionally placing themselves between an officer and a subject that is being questioned and/or arrested, for the purpose of hindering the officer in the performance of their duties.
 - 3. Inciting bystanders to hinder or obstruct an officer in the performance of their duties.
- B. An individual’s recording of police activity from a safe distance without any other action intended to obstruct the activity or threaten the safety of others does not amount to interference.
- C. A person’s expression of criticism of the police (or the police activity being observed) does not amount to interference.
 - 1. The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.
 - 2. Even foul expressions of disapproval towards police officers are protected under the First Amendment.
 - a. The U.S. Supreme Court has held that a ‘properly trained officer may reasonably be expected to exercise a higher degree of restraint’ than the average citizen when it comes to reacting to insults or ‘fighting words’.
 - b. Courts have given First Amendment protection to persons who made obscene gestures and yelled profanities at police officers, and they have prohibited the police from interfering with such speech.

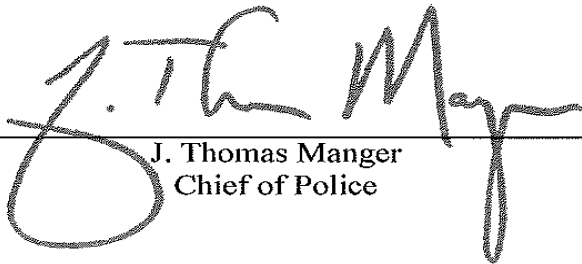
V. Warrantless Seizures

- A. The warrantless seizure of material (photos, videos, etc.) from persons observing police conduct will be strictly scrutinized by a court. In ordinary circumstances, the seizure of cameras or recording devices without a warrant will not be reasonable. Cameras or recording devices will not be seized without a warrant unless:
 - 1. Officers have probable cause to believe that important evidence of a crime is contained on/in the camera or recording device (the rationale for the seizure must be described in the event report); and
 - 2. Officers first have explained the circumstances and have unsuccessfully attempted to obtain the consent of the person in possession of the recording device; and

3. The seizure of the camera/recording device is for no longer than reasonably necessary for the officer to obtain a warrant to seize the evidence; and
 4. Unless exigent circumstances exist, supervisory approval must be granted prior to the seizure.
- B. If a camera/recording device is seized without a warrant pursuant to the previous section, a supervisor will be notified as soon as possible, and officers are prohibited from seizing or viewing the evidence contained in the device until a warrant is obtained for that seizure, unless:
1. An exigent circumstance affecting public safety exists, and
 2. Supervisory approval is obtained before seizing or viewing the evidence, and
 3. The seizure or viewing of the evidence contained in the device is described in the event report.
- C. All seized evidence will be handled in accordance with existing departmental evidentiary procedures.

VI. CALEA Standards: 1.2.3, 54.1.3

VII. Proponent Unit: FSB



J. Thomas Manger
Chief of Police